Transparency and Trust team
Department for Business, Energy and Industrial Strategy
1 Victoria Street
London
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By email: transparencyandtrust@beis.gov.uk

16 December 2016

Dear Sirs,

Re: BVCA response to discussion paper on the transposition of Article 30: beneficial ownership of corporate and other legal entities

1. We are writing on behalf of the British Private Equity and Venture Capital Association ("BVCA"), which is the industry body and public policy advocate for the private equity and venture capital industry in the UK. With a membership of over 600 firms, the BVCA represents the vast majority of all UK based private equity and venture capital firms, as well as their professional advisers. Our members have invested over £27 billion in nearly 3,900 UK-based companies over the last five years. Companies backed by private equity and venture capital in the UK employ around 385,000 people and 84% of UK investments in 2015 were directed at small and medium-sized businesses.

2. We have submitted a number of representations and held meetings with your department over the past two years to discuss the Small Business, Enterprise and Employment Act (the "Act") and the register of people with significant control (the "PSC register"), and remain grateful for the continued dialogue.

3. This letter includes our views on the questions in the discussion paper that are most relevant for our members. Before commenting on the transposition of Article 30 of the Fourth Money Laundering Directive (the "Directive"), we would first like to highlight two outstanding points we have on the implementation of the PSC register. These points have been previously discussed with BEIS and it was recommended that they be bought to your attention to address as part of the implementation of the Directive.

Non-registrable provisions contained in The Companies Act 2006 (Amendment of Part 21A) Regulations 2016

4. If an individual or legal entity only satisfies condition 4 or 5 in relation to a company or LLP that is at the top of a corporate chain and his/its interest is held through a trust or legal entity that does not have separate legal personality e.g. an English limited partnership, it is not possible for such individual or legal entity to satisfy the non-registrable provisions in relation to the other UK companies/LLPs in the corporate chain. This is because individuals and legal entities are only non-registrable if they hold interests through a chain of one or more legal entities (over each of which they have significant control and there is an RLE in the chain). As the interests

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are held through a trust or legal entity with no legal personality this element of the test will never be satisfied. This means the individual or legal entity needs to be registered in the PSC register of all UK companies and LLPs in the corporate chain.

5. Limited partnerships are commonly used in private equity fund and venture capital structures. One or more limited partnerships would together constitute the fund and hold a chain of UK companies. with each company holding 100% of its subsidiary company which would then hold the operating companies. Typically, the general partner controls the limited partnership and by way of example if the limited partnership satisfied one of the other conditions (by owning more than 25% of the shares) if it were an individual, then the general partner will satisfy condition 5 and need to be registered in the register of each UK company in the chain. It does not benefit from the non-registrable provision because it does not hold its interest through a chain of legal entities, it holds it through a partnership structure which is not a legal entity. There is a mismatch here with the treatment of general partners of English limited partnerships and Scottish limited partnerships. This is because the latter has separate legal personality, which means the non-registrable test can be met by a general partner of a Scottish limited partnership.

6. We understand the intention of the legislation is to avoid duplicating information and believe this issues could be addressed through an amendment by way of a Statutory Instrument. In the situation explained above, the general partner does not need to be registered at every level – and to do so may give rise to confusion given most "wholly owned" structures would have such repetition of disclosures and it is possible to work up the ownership chain as would be the case if the limited partnership had legal personality and still have the full control picture.

Employee exception in the Statutory Guidance

7. Another concern raised previously relates to the employee exception in the Statutory Guidance which applies to an employee. We understand that the policy intention is that an investor director who represents the interest of a shareholder would not have significant influence/control through vetoes rights which he may exercise on behalf of the appointing shareholder as he is a mere conduit for the shareholder. That being the case, BEIS indicated that the exemption set out in paragraph 4.5 of the statutory guidance was aimed at this, amongst other, circumstances: "Where the person is an employee acting in the course of their employment and nominee for their employer, including an employee, director or CEO of a third party (such as a corporate director company), which has significant influence or control over the company" is aimed at this sort of role.

8. Private equity and venture capital funds (who hold the investments) themselves do not have employees and nor do general partners of a limited partnership (because general partners have unlimited liability) and so the employees themselves are often employees of the fund manager or investment adviser some other entity in the manager's group, rather than being a direct employee. This issue arises in most corporate groups indeed as often there is one company in the group that employs employees and that is not otherwise an operating company, in part to protect the position of employees. This is further complicated in a private equity context as many professionals are partners of a limited liability partnership that is the fund manager or investment adviser (or another group entity) rather than employees strictly speaking.

9. As such we would propose the following wording to extend the ambit to cover this conduit arrangement:

   "acting the course of [their/his] employment and nominee for their employer (or an affiliate of their employer), including an employee, director or CEO or other representative in the course of [their/his] employment or occupation of a third party" (such as a corporate director company), which has significant influence or control over the company".

10. We would also like to take this opportunity to raise a typo we have noted in the 'Draft LLP statutory guidance for the PSC register.' In part 2.10 of the draft guidance, the word "absolute" appears to be missing before "veto rights". Note it is included in paragraph 2.9 of the 'Company statutory guidance for the PSC register' which covers the same point.

Consultation questions

Question 1: The Government welcomes views on this approach for determining the scope of Article 30 and on any alternative methods which could be considered.

11. This approach is appropriate for determining entities within scope.

Question 2. Do you agree with this analysis regarding the types of entity that should and should not be considered to be in scope of Article 30 of the Directive? Are there entities not listed above which should be considered in the context of determining the scope of Article 30?

12. We agree that Scottish limited partnerships (which are used within private equity and venture capital fund structures) fall within the scope of Article 30. We would, however, like to confirm our understanding of Scottish limited partnerships that have migrated, for example, to the Channel Islands.

13. As noted in paragraph 39.b. of the discussion paper, for an entity to be within scope of the Directive for the purposes of Article 30, the entity has to have been incorporated in the UK and not re-domiciled (i.e. legally transferred its seat (or its incorporation) to another jurisdiction).

14. A Scottish limited partnership that has migrated, in our example to Jersey or Guernsey, is subject to the regulatory and tax rules in those jurisdictions rather than the UK. Whilst these migrated Scottish limited partnerships may have a limited presence in the UK, we are of the view it would be reasonable to scope them out of the Directive for the purposes of Article 30. This would afford consistent treatment for regulatory and tax purposes and reduce the administrative burden of filing additional information in the UK.

15. We agree that English limited partnerships should not be in scope as they do not have a separate legal personality.

Question 3. What would be the potential costs and benefits of companies on UK prescribed markets also having to comply with UK PSC register requirements from June 2017? Please provide evidence where possible.

Question 4. If UK companies on UK prescribed markets were to be brought into scope, what transitional arrangements would be necessary or helpful?

16. We do not agree with the proposal to bring companies listed on prescribed markets, such as AIM, which is a market used by our members, within the scope of the PSC Register requirements. Given the disclosure requirements already applicable to such companies we do not see what additional benefits this would bring.

17. This will increase the compliance burden for companies impacted by the proposal as working through the PSC register requirements and related guidance is not a straight forward exercise. Some of our members have had to obtain legal advice on companies currently within scope thereby increasing the time and cost spent on filing the initial returns.

Question 5. We welcome views as to what modifications to these conditions would be required in respect of any of the different types of entity listed at paragraph [39].

18. When implementing the requirements for new types of entities within scope, the exemption available under the Act from conditions 1 to 3 for limited partners in a limited partnership registered under the Limited Partnerships Act 1907 should continue to apply (on the assumption they do not take part in the management of the limited partnership).

Question 6. Do you have views on the definition of 'significant control' and the requirement to record the 'nature and extent of control' for the additional types of entity to be brought within scope? Are there particular issues to which you would draw our attention regarding the application of this approach to any of the types of entity listed at paragraph 37?

19. We agree the current approach should continue to be applied.

Question 7. Do you agree with our proposed approach to ensuring the 'accuracy' and 'adequacy' of PSC information? Namely, to retain the arrangements as they are for entities already covered by the PSC register and extend the same approach to those brought within scope by the Directive?

20. We agree the current approach should continue to be applied.

Question 8. Do you agree with our analysis on the need for change to ensure that information is 'current'? Is six months an appropriate period to allow an entity to update its PSC information following any change? If not, why not?

21. We would recommend that companies should only be required to update their PSC information if there is an event that the company is aware of which would require the information to be updated. Otherwise companies should be required to reconfirm their information every 12 months if there have been no changes, in order to meet the objective of ensuring the information is adequate and accurate.

Question 9. For entities which already fulfil domestic PSC requirements: Do you expect any changes in terms of who, within the corporate entity, will be involved and how long it will take for the corporate entity to update PSC information as a result of changing the frequency of updates from 12 months to within 6 months of a change?

22. As above it would be preferable to require companies to update their registers only when there is a change or reconfirm their PSC information if there have been no changes every 12 months, rather than every 6 months.

Question 10. Are there any practical implications that publicly accessible information will have for particular types of entity that you would like to draw to our attention?

23. Please note the point raised above in respect of investor directors who should fall within the employee exemption.

We would be very keen to discuss the contents of this letter further with you and please contact Gurpreet Manku at the BVCA to arrange a meeting.

Yours faithfully,

Amy Mahon
Chair, BVCA Legal & Accounting Committee